

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE MINNESOTA BOARD OF PEACE OFFICER STANDARDS AND TRAINING

In the Matter of the
Hearing Regarding the
Peace Officer License
of Edwin Dale Elbers.

RECOMMENDATION
ON MOTION FOR
SUMMARY DISPOSITION

The above-entitled matter is before the undersigned Administrative Law Judge on an oral motion for summary disposition made during a prehearing conference on March 6, 1990, by the Board of Peace Officer Standards and Training (Board). The record closed on this motion on March 6, 1990.

Mary J. Theisen, Special Assistant Attorney General, 200 Ford Building, 117 University Avenue, St. Paul, Minnesota 55155 represented the Board. Sheriff Edwin D. Elbers, Rock County Sheriff's Office, P.O. Box 66, Luverne, Minnesota 56156 appeared on his own behalf.

Based on the record herein, the Administrative Law Judge respectfully makes the following:

RECOMMENDATION

it is recommended that the Board of Peace Officer Standards and Training order that the Board's motion for summary disposition be GRANTED and the peace officer license of Edwin Dale Elbers be revoked.

Dated: April 3 1990.

STEVE M. MIHALCHICK
Administrative Law Judge

NOTICE

This Report is a recommendation, not a final decision. The Board will make the final decision after a review of the record which may adopt, reject or modify the recommendations contained herein. pursuant to Minn. Stat. 5 14.61, the final decision of the Board shall not be made until this Report has been made available to the parties to the proceeding for at least ten days. An opportunity must be afforded to

each party adversely affected by this Report to file exceptions and present argument to the Board. Parties should contact Executive Director William R. Carter 111, Spruce Tree Center, Suite 200, 1600 University Avenue, St. Paul, Minnesota 55104-3825 to ascertain the procedure for filing exceptions or presenting argument.

Pursuant to Minn. Stat. 5 14.62, subd. 1, the agency is required to serve its final decision upon each party and the Administrative Law Judge by first class mail.

Reported: Taped, not Transcribed, tape no. 8721

MEMORANDUM

During the prehearing conference in this matter, the parties stipulated to many of the facts in this case, and, on the basis of that stipulation, counsel for the Board moved for summary disposition. The relevant facts agreed to are:

- a) Sheriff Elbers was employed as a Rock County Deputy Sheriff from 1973, until July 1, 1977.
- b) While in that position, he held a peace officer certification from the Minnesota Peace Officer Training Board.
- c) Sheriff Elbers did not hold employment as a peace officer from July 1, 1977 to November 4, 1986, when he was elected Rock County Sheriff.
- d) He assumed the office of Sheriff in January, 1987.
- e) Sheriff Elbers has not taken or passed the courses currently required of peace officers by the Board.
- f) Pursuant to 1987 Minn. Laws Ch. 35 1, Sec. 6, the Board issued Sheriff Elbers a peace officer license.
- g) in this proceedings the Board seeks to revoke the license presently held by Sheriff Elbers for failure to take and pass the courses currently required of peace officers.

Summary disposition may be granted where there is no genuine issue of material fact. Minn. Rule 1400.5500(K). Summary disposition in the contested case process is the equivalent of summary judgment. Summary judgment is appropriate where there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. *Sauter v. Sauter*, 70 N.W.2d 351, 353 (Minn. 1955); *Louwagie v. Witco Chemical Corp.*, 378 N.W.2d 66, 66 (Minn.App. 1985). The evidence must be viewed in a light most favorable to the non-moving party. *Sauter*, 70 N.W.2d at 353. Under Minn. Rule of Civil Procedure 56.05, the party defending the motion must present "specific facts showing there is a genuine issue for trial." Minn. Rule of Civ. Proc. 56.05.

In 1987, Minn. Stat. 5 626.846 was amended to provide that persons seeking to occupy the elected post of sheriff after June 30, 1987, must

he licensed (or he eligible for licensure) by the Board. 1987 Minn.
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Ch. 358, Sec. 130. At the same time, t987 Minn. haws Ch. 358, Sec. 6,
was enacted, which states:

Notwithstanding any other law to the contrary, any presently duly elected sheriff must be licensed by the board as a peace officer as defined in Minnesota Statutes, section 626.84, subdivision 1, paragraph (c), provided that the sheriff must complete all current board requirements by June 30, 1989. Failure to complete board requirements by June 30, 1989, shall result in revocation of any license granted, with the office of sheriff being declared vacant. An election must be held to fill the vacancy in the office of sheriff as provided by law.

Sheriff Elbers was elected to the office of Sheriff of Rock County in 1986 and the Board granted Sheriff Elbers a license as required by this legislative enactment. Other than by this law, Sheriff Elbers was not entitled to a license.

No one disputes that Sheriff Elbers has not met the current board requirements for licensure. Pursuant to 1987 Minn. Laws Ch. 358, Sec. 6, the Board must now revoke the license it issued to Sheriff Elbers under that same law.

Sheriff Elbers argued that he was exempt from the licensure requirements of the Board owing to Minn. Stat. 387.01, which requires persons elected or appointed to the office of Sheriff to hold a certificate of satisfactory completion of the basic training course from the Minnesota Peace Officers Training Board, or obtain that certificate within one year. Sheriff Elbers pointed out that he holds that certificate and, argued, therefore, that he is entitled to remain in the office of Sheriff. Counsel for the Board argued that Sheriff Elbers' certificate had lapsed, rendering him ineligible under that statute. This issue is moot owing to the operation of 1987 Minn. Laws Ch. 358, Sec. 6, which clearly supersedes the earlier law, Minn. Stat. sec. 387.01, through the use of the phrase, "notwithstanding any other law to the contrary." Minn. Stat. 387.01 does not apply in this case.

The foregoing analysis resolves the issues raised in this proceeding regarding licensure. However, counsel for the Board inquired as to whether the Administrative Law Judge would issue an order removing Sheriff Elbers from the position of Rock County Sheriff, should the Board prevail on its motion for summary disposition. The Administrative Law Judge has concluded that no such order may be issued by the Judge, because an order removing a Sheriff from his office is beyond the jurisdiction of the Board and the Administrative Law Judge.

Sheriff Elbers was elected to the position of Sheriff of Rock County in 1986. Subsequently, 1987 Minn. Laws Ch. 358, Sec. 6, was enacted to require that any unlicensed sheriff must obtain a license by June 30, 1989. Failure to obtain that license would result in the revocation of that sheriff's license and the post of sheriff being declared vacant. 1987 Minn. Laws Ch. 358, Sec. 6. However, the Legislature passed a later law which states:

Notwithstanding any other law to the contrary, if any presently duly elected sheriff is licensed by the board on July 1, 1989, only as a result of Laws 1987, chapter 358, section 6, the county board of that

county may, after notice to the sheriff and a public hearing, declare by resolution that the office of sheriff in that county is vacant, and may schedule a special election to fill that office. Any presently duly elected sheriff who is licensed by the board on July 1, 1989, only as a result of Laws 1987, chapter 385, section 6, may continue to serve in that office without meeting the licensing requirements of the board only until a successor is duly elected at a special election or, if no election is held, until the expiration of the term for which the sheriff was elected.

1989 Minn. Laws Ch. 269, Sec. 6.

Nothing in this session law grants the Board any authority to remove any sheriff or declare any office vacant.

Even in the absence of 1989 Minn. Laws Ch. 269, Sec. 6, it appears that the Board lacks the authority to order the removal of Sheriff Ethers from his position as Sheriff of Rock County. The powers and duties of the Board are set forth in Minn. Stat. 626.845. Those powers and duties extend to all matters relating to the granting and revocation of licenses. No power is granted to the Board under that statute to remove any person from an elective or appointive post. The Board cannot act without authority from the Legislature. Without a statutory grant of authority to remove an incumbent from a position, that action is outside the Board's jurisdiction. *McKee v. County of Ramsey*, 245 N.W.2d 460, 462 (Minn. 1976); *State ex. rel. Spurck v. Civil Service Board*, 32 N.W.2d 583, 586 (Minn. 1948). Under Minn. Stat. Ch. 14, the Administrative Law Judge is to render a recommendation to the Board regarding the appropriate decision in this case. The Administrative Law Judge cannot recommend that the Board exceed its jurisdiction.

Sheriff Elbers has also raised questions about the validity of the session laws affecting his license and office. An administrative agency has no jurisdiction to consider the validity of statutes. *Neeland v. Clearwater Memorial Hospital*, 257 N.W.2d 366 (Minn. 1977). These questions, and the issue of removal from office, can only be addressed in court.

Since the material facts in this case are not in dispute, summary disposition is appropriate. Under the facts, the applicable law requires that the Board revoke the license of Sheriff Elbers. The Administrative Law Judge respectfully recommends that the Board's motion for summary disposition be granted.

S.M.M.

1/ The date that license was issued is not in the record of this proceeding. The Administrative Law Judge presumes that the license was issued after the 1987 session Law took effect.